

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
RICHARD K. BRIGGS,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 78-189

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for outdoor burning allegedly in violation of respondent's Section 8.02(3) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Seattle, Washington on November 1, 1978. Hearing examiner William A. Harrison presided. Respondent elected an informal hearing pursuant to RCW 43.21B.230.

Appellant Richard K. Briggs appeared on his own behalf. Respondent appeared by its attorney, Keith D. McGoffin. The proceedings were not recorded.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I containing respondent's regulations
8 and amendments thereto, of which official notice is taken.

9 II

10 Appellant is constructing a sixplex residential building on a site
11 near Port Orchard, Washington. The area is residential, with businesses
12 two to three blocks away.

13 On Friday, June 16, 1978, appellant, his wife and four children (ac -
14 3, 4, 9 and 10) arrived at the site and began collecting waste building
15 material left by the workmen. From these, only clean untreated wood was
16 selected, at noontime, for a small fire (4'x4'x1-1/2') to be used for
17 cooking hot dogs and marshmallows. After the meal was eaten, clean-up
18 continued with the fire still in progress. While unsupervised by their
19 parents, one or more of the children threw into the fire three small
20 pieces of plastic pipe (cross sections that had been used as a bracelet
21 --see Exhibit A-1) and some small quantities of asphalt roofing and
22 sound-deadening board. Appellant saw these materials in the fire and
23 instructed his children not to burn material other than clean wood.

24 III

25 In the meantime, respondent received a complaint concerning the fire
26 and dispatched its inspector to the scene who observed the fire as

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 described above (see Exhibits R-1 and R-2). There was a moderate amount
2 of smoke, with a blue haze. Appellant was cooperative and extinguished
3 the fire at the inspector's request. Appellant later received a Notice
4 and Order of Civil Penalty (No. 3896) in the amount of \$250. From this,
5 appellant appeals.

6 IV

7 The appellant has had no prior record of any violation of the
8 regulations of the respondent.

9 V

10 Any Conclusion of Law which should be deemed a Finding of Fact is
11 hereby adopted as such.

12 From these Findings, the Pollution Control Hearings Board comes
3 to these

14 CONCLUSIONS OF LAW

15 I

16 The Legislature of the State of Washington has enacted the following
17 policy on outdoor fires:

18 It is the policy of the state to achieve and maintain high
19 levels of air quality and to this end to minimize to the
20 greatest extent reasonably possible the burning of outdoor
21 fires. Consistent with this policy, the legislature declares
22 that such fires should be allowed only on a limited basis
23 under strict regulation and close control. RCW 70.94.740.

22 Pursuant to this and other legislative authority, the respondent
23 has adopted its Regulation I, Section 8.02(3) which provides:

24 It shall be unlawful for any person to cause or allow any out-
25 door fire . . . containing garbage, dead animals, asphalt,
26 petroleum products, paints, rubber products, plastics or any
27 substance other than natural vegetation which normally emits
28 dense smoke or obnoxious odors

1 In allowing plastic pipe, asphalt roofing and sound-deadening board to
2 be burned, appellant has violated respondent's Regulation I, Section
3 8.02(3).

4 II

5 Respondent has not alleged that the appellant's fire constituted a
6 violation in and of itself. The violation arises solely from the de
7 minimus prohibited materials added to the fire by appellant's children.
8 The penalty must therefore be mitigated to accord with the minor extent
9 of this violation. This mitigation is further justified by appellant's
10 record of no prior violations of respondent's regulations.

11 III

12 Any Finding of Fact which should be deemed a Conclusion of Law is
13 hereby adopted as such.

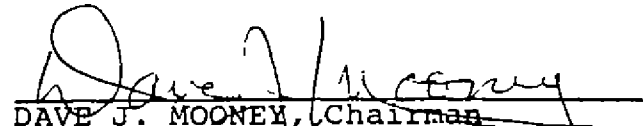
14 From these Conclusions, the Board enters this

15 ORDER

16 The violation (No. 3896) is affirmed, provided, however, that the
17 civil penalty is hereby abated to the amount of \$25.

18 DONE at Lacey, Washington, this 17th day of November, 1978.

19 POLLUTION CONTROL HEARINGS BOARD

20 
21 DAVE J. MOONEY, Chairman

22 
23 CHRIS SMITH, Member